

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Pinnacle Employee Services, Inc., a  
California Corporation; Michael Allen, an  
individual

Plaintiffs,

vs.

Pinnacle Holding Company, LLC, a  
Delaware Limited Liability Company

Defendant.

Case No.: 2:22-cv-01367-CKD

**MARK PIETROWSKI**, under penalty of perjury and pursuant to 28 U.S.C. § 1746, hereby  
declares:

1. I am the Chief Executive Officer of Pinnacle Employee Services, LLC (“PES LLC”). I have held this position since November 12, 2014.
2. I submit this declaration in support of the Defendant Pinnacle Holding Company, LLC’s (“PHC” or “Defendant”) motion to dismiss the Complaint.
3. PHC is a holding company that does not do business on its own. PES LLC is a wholly owned subsidiary of PHC.
4. PES LLC was formed as a Delaware Limited Liability Company on July 17, 2014. It began doing business at that time under the name PINNACLE EMPLOYEE SERVICES.
5. PES LLC’s headquarters and only physical location is in East Syracuse, New York.
6. PES LLC is a professional employer organization (also referred to as a “PEO”). PES LLC’s customers are themselves business entities and organizations that hire PES LLC as a “co-employer” that handles all of the client’s day-to-day human resources issues and needs,

payroll and compensation administration, employment tax responsibilities, employee benefits and insurance, and many other employee-related responsibilities. PES LLC is a partner to whom its clients outsource these complex and ever-changing requirements associated with human resources and employee compliance issues, so the client can focus on running and growing their business.

7. PES LLC is a regional company, with clients throughout the eastern United States. It is not a national company. It does not have any clients on the west of the Mississippi River.

8. Most important, PES LLC does not have any clients in California. PES LLC does not have any employees in California. PES LLC has not entered into contracts in California or contracted with a person or company that is a citizen of California. No employee has ever travelled to California on PES LLC's behalf. PES LLC does not own any real estate in California and does not have any representatives, agents or others operating on its behalf in California. PES LLC is not registered to do business in California and has never done business in California.

9. PES LLC has never advertised or marketed itself in California. PES LLC has never taken any steps to avail itself of California law, to solicit clients from or in California, and ever done – or sought to do – business in California.

10. It is my understanding that many of the Plaintiffs' allegations center around PES LLC's website, [www.pinnacleemployeeservices.com](http://www.pinnacleemployeeservices.com) (the "Website"). That domain was registered on October 21, 2014 and has been used by PES LLC since that time.

11. The Website is a passive website in that customers or client cannot buy our services through it; rather it is a general informational website. For visitors who might happen

upon it or even if they look for the Website intentionally, they cannot purchase anything, sign up for any services, or engage in any commercial activity whatsoever. Rather, it merely provides information about PES LLC and its services, and provides contact information so that people can reach out to PES LLC for further information.

12. The Website has an interactive component, but only for those clients that have *already hired* PES LLC to act as its PEO. Once PES LLC is hired, it provides its clients and its clients' employees access to either an employer or employee portal, which are accessed through the Website. The portal provides customized information and data for each client and their employees relative to the payroll, benefits, human resource and other services PES LLC provides to its clients. The portal is also accessible through a smartphone application that a client and its employees can download. The smartphone application's functionality and accessibility mirror the Website's for all practical purposes.

13. The Website's portal feature is not accessible to non-clients, and access is granted to PES LLC clients only after they entered a service agreement with PES LLC. Only at that point does PES LLC provide its client's access to an employer portal and establish a registration process by which client's employees can register with PES LLC to use the employee portal. There is no way for anyone to access, review, use or register for the portal until after they or their employer have become a client of PES LLC and been set up in our system. PES LLC creates all client portal profiles and it is not possible for anyone to create a profile, access or interact with the portal prior to PES LLC creating a profile.

14. Again, PES LLC does not have any clients in California. No California resident has ever registered as a user of the Website portal, PES LLC has never created a portal profile

for a California resident, and therefore, to our knowledge, no California resident has ever accessed, much less interacted with, PES LLC's client portal.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Dated: November 29, 2022

  
**MARK PIETROWSKI**